

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 1084/98

DATE OF DECISION: 17/4/2000

____ Shri Hanumantappa Yellappa Uppar .. Applicant.

Shri S.V. Marne

-----Advocate for
Applicant.

Versus

Union of India & 3 Ors.

-----Respondents.

Shri R.R. Shetty

-----Advocate for
Respondents.

CORAM:

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member(A)

1. To be referred to the Reporter or not? *Yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*
3. Library.

R.G. Vaidyanatha
(R.G. VAIDYANATHA)
VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 1084/98
DATED THE _____ DAY OF APRIL, 2000

CORAM:HON'BLE SHRI JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN.
HON'BLE SHRI D.S.BAWEJA, MEMBER(A)

Hanumantappa Yellappa Uppar
formerly working as
Substitute Radiographer,
Central Railway Hospital
Wadi

Residing at
Krishnapur Oni
Badigar Chawl,
Old Hubli
Hubli,
Karnataka

... Applicant

By Advocate Shri S.V.Marne

V/s.

1. Union of India, through
General Manager,
Head Quarters Office,
Central Railway,
Mumbai CST,
Mumbai - 400 001.
2. The Medical Director
(Health Service),
Medical Department,
Central Railway,
Mumbai CST,
Mumbai - 400 001.
3. Divisional Railway Manager,
Central Railway,
DRM's office,
Sholapur
4. Medical Superintendent,
Central Railway Hospital,
Sholapur.

... Respondents.

By Advocate Shri R.R.Shetty.

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(ORDER)

Per Shri Justice R.G.Vaidyanatha, Vice Chairman.

This is an application filed by the applicant challenging the order of termination dated 2/12/88. Respondents have filed reply opposing application. Applicant has filed MP-795/98 for condonation of delay. We have heard both counsels regarding admission and MP for condonation of delay.

2. The applicant was appointed as a substitute Radiographer with a specific condition that his appointment is for a period of three months or till a regularly selected candidate is available whichever is earlier. The order of appointment is dated 14/1/1988 It appears in December, 98 regularly selected candidate were available and therefore the services of the applicant came to be terminated w.e.f. 2/12/98 and giving one month wages in lieu of notice period. The applicant being aggrieved by order of termination dated 1/12/1988 has come up with present application filed in 1998 exactly 10years after the cause of action.

Applicant has filed MP-795/98 praying for condonation of delay on the ground that after termination, he went back to his native place in Karnataka and he subsequently came to know that similarly placed officials had approached the High Court and got relief by the Supreme Court and therefore he has come up with the present application. He therefor wants the delay to be condoned.

3. The respondents have seriously opposed the MP for condonation of delay. Their defence is that the claim is hopelessly barred by limitation and no grounds are made out for condoning delay of 10years. Then they have also taken a stand

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that since regularly selected candidates became available, the service of the applicant came to be terminated.

4. The learned counsel for the applicant submitted that it is a fit case in which the delay should be condoned and the application should be admitted. The learned counsel for respondents seriously opposed the admission of the application and also submitted that the claim is barred by limitation.

5. No factual grounds are made out in the MP for condonation of delay except stating that the applicant had gone to his native place in Karnataka after termination and he wants relief since similarly placed officials got relief from Supreme Court. He does not explain the delay in approaching this Tribunal from December, 1988 to December, 1998.

The learned counsel for applicant strongly placed reliance on the decision of Supreme Court (AIR 1987 SC 1353) *Collector, Land Acquisition, Anantnag & Ors. V/s. Mst. Katiji & Ors.* That was a case where in a land acquisition appeal which involved 141acs Rupees, there was delay in filing the appeal by just four days. The High Court had dismissed the appeal on the ground of limitation and the matter was taken in appeal before Supreme Court. The Supreme Court pointed out the Principles for considering the condonation of delay and on that basis the Supreme Court noticed that normally there will be delay in Government appeals in view of the bureaucratic methodology and therefore the delay should be condoned. On facts, the Supreme Court held that there is sufficient cause for condoning the delay. Therefore, that was not a case where merely on the

basis of Principles the Supreme Court straightaway allowed the appeal but on going through the question of facts and on facts it was found that there was sufficient cases and accordingly appeal was allowed and order of High Court was set aside and the matter was remitted to High Court for disposal according to law. We have already pointed that the delay was just of four days whereas in the present case, the delay is 10years in approaching the Tribunal. On general principles, there can be no quarrel. But we have to make distinction between regular disputes and service disputes. In service dispute, it is not a matter between the official and the administration but it will have repercussion on questions of seniority, promotion and so many other officials are affected in the service disputes.

6. In this connection, we may refer to leading judgement of Apex Court, in Bhoop Singh V/s. Union of India and Ors. reported at (AIR 1992 SC 1414) where there was undue delay of 22years in approaching Tribunal for relief. The Supreme Court has observed that allowing such a belated claim will naturally dislocate the Administrative Setup which has been functioning on a certain basis for years. The impact on Administrative Set up and on other employees is a strong reason to decline consideration of stale claim unless the delay is satisfactorily explained and is not attributable to the claimant. That was also a case where the applicant wanted relief which had been granted to similarly situated employees who had been reinstated in service. The Supreme Court declined the relief mainly on the ground of delay, laches and limitation.

The matter also has been considered by Constitutional

Bench of Supreme Court in S.S.Rathore v/s. State of Madhya Pradesh reported at (AIR 1990 SC 10) . The Supreme Court has observed that in case of termination, the first cause of action is the Date of Termination and subsequent cause of action is the order of Appellate Authority and one has to approach the Civil Court within 3 years from the date of cause of action under article 58 of Limitation Act. But under Administrative Tribunals Act the one year to approach the Tribunal under Section-21 of Administrative Tribunals Act.

7. Respondent's counsel has brought to our notice a decision of the Apex Court in the State of Karnataka and Ors. v/s. S.M.Kotrayya and Ors. reported in (1996 SCC (L&S) 1488), that was a case where there was a delay of about three to four years in approachingt the Tribunal regarding some dispute pertaining to LTC. The reason for delay was that similarly placed officials had approached the Tribunal and had obtained the relief. Infact, the Administrative Tribunal had condoned the delay and had allowed the application. On appeal, on the basis of the Constitutional Bench judgement in S.S.Rathor's case mentioned above, the Supreme Court held that delay cannot be condoned unless the respondents had given sufficient explanation. Mere fact that similarly placed officials got relief is by itself no ground for condonation of delay. Accordingly, the Supreme Court allowed the appeal by reversing the order of the Tribunal.

We are also fortified by a judgement reported in a recent case Reported in 2000(1) S.L.R.-20 (Delhi Administration and Others v/s. Hira Lal and Others), it is also an identical

case of approaching this Tribunal on the ground that other employee and approached this Tribunal about 16years later and got relief. The High Court had allowed the application. The Supreme Court reversed the order of High Court only on the ground of delay and laches and limitation.

7. The learned counsel for applicant also invited our attention to a judgement of Bombay High Court reported at (989(2) BOMCR 15) Baburao Wankede V/s. Seva Sahakari Sanstha & Another where the High Court had condoned the delay of 10years in filing the appeal in a dispute under the Co-operative Societies Act. The High Court has noticed that there is inordinate delay in filing appeal. The High Court observed that in the interest of justice, delay should be condoned and the matter should be decided on merits. Since delay would result in matter being thrown out on the ground of limitation straightaway. Thus, on merits, the High Court noticed that the order against the applicant was without jurisdiction since he was not a party to be proceeded against under Section 91 of the Maharashtra Co-operative Societies Act and therefore the Impugned order was liable to be quashed. The means, the High Court was very much satisfied that on merits the Impugned order was liable to be set aside. Therefore, the High Court did not want to leave such an order intact only on the ground of limitation. Infact, the order must be read with facts of the case.

8. In the present case, the applicant has not explained the 10years delay in approaching this Tribunal, except one statement that he was not aware of the proceedings and he has now come with

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a prayer that similarly placed officials had approached Supreme Court and obtained orders.

9. Even on merits, we find that applicant's contention that Supreme Court has given relief to similarly placed officials and the same relief should be extended to applicant is not correct because the Supreme Court has not decided the case at all, but only passed an order on the concession or a statement made by the Government Counsel. The order of the Supreme Court is produced at page-60 of the paperbook where the Supreme Court has noted that a statement was made by the Government Counsel that the petitioners before Supreme Court will be given an opportunity to appear before Railway Recruitment Board for selection according to law.

No law was laid down but because of a concession made by Government Counsel, the Writ Petition was disposed of without going into the correctness or legality of the order of termination, similar relief cannot be granted to the applicant in the present case since there is no such concession made by respondents in this case.

10. In this case, the applicant's very appointment was a substitute appointment till a regular candidate is available. Admittedly, a regularly selected candidate became available and services of the applicant were terminated. The applicant's services were purely temporary in nature under the Temporary



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Service Rules. Therefore, we do not find any merit in the applicant's case, therefore the question of condoning the delay of 10 years does not arise.

10. In the result, both the application and the MP - 795/98 are dismissed. No orders as to costs.



(D.S.BAWEJA)
MEMBER(A)

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(R.G.VAIDYANATHA)
VICE CHAIRMAN